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In The

Supreme Court of the United States

NORRIS EMMETT GWIN,

Petitioner,

v.

MARYLAND MOTOR
VEHICLE ADMINISTRATION,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Maryland

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER MARYLAND'S STATUTE PROHIBITING ISSUANCE OF A DRIVER'S LICENSE TO A PERSON WHOSE DRIVING PRIVILEGE IS REVOKED IN ANOTHER STATE VIOLATES THE DRIVER LICENSE COMPACT?

LIST OF INTERESTED PARTIES

The caption contains the names of all the parties below.

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OPINION BELOW

The reported opinion of the Court of Appeals of Maryland, *Gwin v. Motor Vehicle Admin.*, 385 Md. 440, 869 A.2d 822 (2005), affirming the order of the Circuit Court for Anne Arundel County, Maryland, is reproduced in Appendix A (App.1-App.29).

STATEMENT OF JURISDICTION

The petitioner requests that this Court grant the petition for writ of certiorari and reverse the judgment of the Court of Appeals of Maryland in *Gwin v. Motor Vehicle Admin.*, 385 Md. 440, 869 A.2d 822 (2005). The Court of Appeals decision applies the Driver License Compact, a congressionally authorized compact, contrarily to decisions of the Supreme Courts of Alabama and Iowa. *Welch v. Alabama Dept. of Pub. Safety*, 519 So.2d 517 (Ala. 1987); *State v. Vargason*, 607 N.W.2d 691 (Iowa 2000). The Court has jurisdiction to consider the Driver License Compact issue pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The United States Constitution, Article I, Section 10, Clause 3 provides:

> Section 10, Clause 3. Duty on Tonnage, State Compacts, War
>
> No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement

> or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

The pertinent provisions of Maryland Code Ann., Transp. II §§ 16-103.1, 16-208, 16-701-03 (1977, 2002 Repl. Vol.) are set forth in Appendix D.

STATEMENT OF THE CASE

Factual background

On April 8, 2003, the petitioner, Norris Emmett Gwin, a Maryland resident, applied to the Maryland Motor Vehicle Administration (MVA) for a Maryland driver's license.[1] At that time his driving privileges had been revoked in Illinois since 1982 and in Florida since 1984. The Florida revocation is a permanent lifetime revocation for four drunk driving convictions that occurred over twenty years ago. Under current Florida and Illinois law,[2] there is no relief from either revocation.[3] Gwin's application was denied pending proof of clearance from those states.

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[1] The statutory definition of "license" includes the "privilege of any individual to drive a motor vehicle, whether or not that individual is formally licensed by this or any other jurisdiction" and "[a]ny nonresident's privilege to drive." Md. Code Ann., Transp. II § 11-128 (1977, 2002 Repl.Vol.).

[2] After the Maryland Court of Appeals announced its opinion in this case, the Illinois intermediate appellate court decided a similar issue, and held that Illinois law barred a person with four drunk driving convictions from obtaining an Illinois driver's license. *Girard v. White*, 826 N.E.2d 517 (Ill.App. 2005).

[3] The petitioner's license to drive in Florida was revoked under Fla. Stat. Ann. § 322.28(2)(e), which states that a person convicted of driving

(Continued on following page)

Proceedings before the Maryland Office of Administrative Hearings

Gwin requested and was granted a hearing before the Maryland Office of Administrative Hearings, and at the hearing argued that under the Driver License Compact, Md. Code Ann., Transp. II § 16-703, art. V(2) (1977, 2002 Repl.Vol.) (the Compact),[4] he was eligible to apply for a license after serving one year of the out of state revocations, if his application was "permitted by law." Counsel further pointed out that under that section, the Motor Vehicle Administration (MVA) would conduct an investigation and possibly refer Gwin to the MVA's Medical Advisory Board (MAB), but that Gwin was confident that he would be able to survive any investigation based on strong mitigating evidence that under Maryland's current medical and safety standards would likely lead to approval by the MVA.[5] Gwin also argued that the Compact superceded

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under the influence of alcohol four times shall have their license or driving privilege revoked for life. Fla. Stat. Ann. § 322.271(4) allows a person whose driving privilege has been permanently revoked for a conviction of manslaughter and who has no prior DUI related convictions, to petition for reinstatement after five years after the date of revocation. However, the 1998 amendment to that provision removed a similar restoration provision for fourth offender drunk drivers. Accordingly, the petitioner's permanent revocation in Florida is for life and there is no provision for restoration of privileges.

[4] The District of Columbia and all fifty states, except Georgia, Massachusetts, Michigan, Tennessee, and Wisconsin, are currently members of the Driver License Compact.

[5] The MVA has a process that must be followed before deciding whether to reinstate a revoked license. *E.g.*, Md. Code Ann., Transp. II § 16-208 (1977, 2002 Repl.Vol.); Md. Regs. Code tit. 11 § 17.08.06. Gwin has been sober for over four years. In January of 2000 he started treatment at the Reality House in Laurel. He spent a couple of months in treatment and then fourteen months at their residential rehabilitative facility. He also attends AA meetings twice a week. *See*, Md. Regs. Code tit. 11 § 17.03.04 I(3). Under this provision in order to recommend

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Maryland's competing provision, Md. Code Ann., Transp. II § 16-103.1 (1977, 2002 Repl.Vol.) which requires the MVA to deny a license to a person "[d]uring any period for which the individual's license to drive is revoked . . . in this or any other state."[6] After considering all of the evidence, the Administrative Law Judge (ALJ) granted Gwin relief stating:

> Even the disqualification section of 16-103.1 does not – although in the end it conflicts, it does not prevent the application and the investigation so I will order that the MVA process the licensee's application for a driver's license because it's been more than a year since the revocation.

Proceedings before the Circuit Court for Anne Arundel County

The MVA filed a timely appeal from the decision of the Office of Administrative Hearings. In a written opinion, the Circuit Court reversed the ALJ on August 5, 2004. The Circuit Court agreed with the MVA's argument that § 16-103.1 did not conflict with the Compact. The court held that the MVA was correct in denying Gwin's application for a driver's license as long as his privilege to drive remained revoked in Florida and Illinois. The written opinion of the Circuit Court is set forth in Appendix B.

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issuing a license to an alcoholic driver the Medical Advisory Board of the MVA requires proof of six months of sobriety, six months of alcohol treatment, and six months of regular attendance at a self-help program such as Alcoholics Anonymous (AA).

[6] Section 16-103.1(1) contains an exception if "the individual is eligible for a restricted license under § 16-113(e) of this subtitle. . . . " Gwin is not eligible for a restricted license under Md. Code Ann., Transp. II § 16-113(e) (1977, 2002 Repl.Vol.).

Proceedings before the Maryland Court of Appeals

The Maryland Court of Appeals granted Gwin's petition for a writ of certiorari, and affirmed the Circuit Court. In *Gwin v. Motor Vehicle Admin.*, 385 Md. 440, 869 A.2d 822 (2005), the Maryland Court of Appeals held that the Driver License Compact and Md. Code Ann., Transp. II § 16-103.1 (1977, 2002 Repl.Vol.) do not conflict. In light of the legislative history of both provisions, the Court rejected the petitioner's argument that the phrase "permitted by law" precluded a state from looking to the law of a foreign jurisdiction when deciding eligibility for a drivers license. As a result of this decision, Gwin remains ineligible for a driver's license in Maryland as long as his privilege to drive remains revoked in Florida and Illinois. Under current law, he will *never* be able to receive a driver's license in Maryland.

REASONS FOR GRANTING THE WRIT

WHETHER MARYLAND'S STATUTE PROHIBITING ISSUANCE OF A DRIVER'S LICENSE TO A PERSON WHOSE DRIVING PRIVILEGE IS REVOKED IN ANOTHER STATE VIOLATES THE DRIVER LICENSE COMPACT

The issue in this case is whether Article V of the Driver License Compact, which enables drivers whose licenses are revoked in a foreign state to apply for reinstatement in the home state, allows home states to deny reinstatement to such drivers based on the foreign revocation. Although all of the opinions to date on this question rely heavily on interpretation of related state statutes and/or regulations, they conflict as to the interpretation of the language in the Compact which states, the application

for reinstatement in the home state is allowed if "permitted by law." Alabama, Iowa, and Illinois interpret Article V to require a state to look to its own law to determine eligibility for reinstatement. *Welch v. Alabama Dept. of Pub. Safety*, 519 So.2d 517 (Ala. 1987); *State v. Vargason*, 607 N.W.2d 691 (Iowa 2000); *Girard v. White*, 826 N.E.2d 517 (Ill.App. 2005). The Maryland Court of Appeals, in *Gwin v. Motor Vehicle Admin.*, 385 Md. 440, 869 A.2d 822 (2005), upheld the Maryland statute, Transp. II § 16-103.1 (1977, 2002 Repl.Vol.) even though § 16-103.1 expressly yields to foreign law to determine eligibility. This result is expressly and impliedly prohibited by the Compact's language and intent. Further, the decision of Maryland's highest court in *Gwin*, that a state may deny a driver's license based on a foreign revocation without violating the Driver License Compact, directly conflicts with the opinions of the Supreme Courts of Alabama and Iowa in *Welch* and *Vargason*. As a result, this Court should grant the petition for a writ of certiorari to resolve the conflict.

In general, interstate compacts are multi-state agreements made with Congressional consent that arise when two or more states enact essentially identical statutes to govern an area of mutual concern across state lines. *See, Aveline v. Penn. Board of Parole and Probation*, 729 A.2d 1254 (Pa. Commw. Ct. 1999). The United States District Court for the District of Maryland, citing several other courts, stated that, "Upon entering into an interstate compact, a state effectively surrenders a portion of its sovereignty; the compact governs the relations of the parties with respect to the subject matter of the agreement and is superior to both prior and subsequent law." *C.T. Hellmuth & Associates, Inc., v. Washington Metropolitan*

Area Transit Authority, 414 F. Supp. 408, 409 (D.Md. 1976). The court went on to explain:

> When enacted, a compact constitutes not only law, but a contract which may not be amended, modified, or otherwise altered without the consent of all the parties. It, therefore, appears settled that one party may not enact legislation which would impose burdens upon the compact absent the concurrence of other signatories. (Citations omitted).

Id. at 409. In *Texas v. New Mexico*, 462 U.S. 554 (1983), the Supreme Court stated that under the Compact Clause, Congressional consent transforms an interstate compact into a law of the United States, and a consequence of that metamorphosis is that no court may order relief inconsistent with the express terms of the compact. *Id.* at 564.

On the other hand, a state is not prohibited from passing legislation regarding the same subject matter as a compact. "It is within the competency of a state, which is a party to a compact with another state, to legislate in respect of matters covered by the compact so long as such legislative action is in approbation and not in reprobation of the compact." *Henderson v. Delaware River Joint Toll Bridge Commission*, 66 A.2d 843, 849-850 (Pa. 1949). In the *Opinion of the Justices* to the Senate, the Supreme Judicial Court of Massachusetts stated:

> As a contractual agreement of a somewhat formal character between states, (citations omitted), a compact should be an ascertainable agreement or arrangement to which the parties have manifested mutual assent. If one party gives assent to one such arrangement and another party gives assent to a substantially different arrangement,

> there could hardly be such mutual assent as would give rise to a contractual arrangement of the standing and dignity of a compact. (Citations omitted).

184 N.E.2d 353, 357 (Ma. 1962). The contractual nature of interstate compacts was explained in more depth in *Aveline*. In that case the court stated, "Because interstate compacts are agreements enacted into state law, they function simultaneously as contracts between states and statutes within those states must be interpreted as both." 729 A.2d 1254, 1257 (Pa. Commw. Ct. 1999). The Court went on to explain in a footnote:

> Compacts have the characteristics of contracts because the enactment of the compact terms as part of an enabling statute by one state is viewed as an offer. The offer may be accepted through the enactment of statutes, including the same compact terms by another state. (Citation omitted). As with other contracts, the Contract Clause of the United States Constitution protects compacts from impairment by the states. Jill E. Hasday, *Interstate Compacts in a Democratic Society: The Problem of Permanence*, 49 Fla. L.Rev.1 (1997). This means that upon enacting a compact, it takes precedence over the subsequent statutes of signatory states, and, as such, a state may not unilaterally nullify, revoke or amend one of its compacts if the compact does not so provide. *Id.*

Id. at 1257, n.10. Based on the foregoing, it is clear that when a state enters into an interstate compact with another state and the compact is approved by Congress, the state has entered into a contractual agreement with the other signatory states, and therefore, no court may

order relief inconsistent with the terms of the compact. The compact law is superior to all prior and subsequent state laws.

In 1958, Congress adopted the Beamer Resolution (Public Law 85-684), which granted Congressional consent in advance to interstate compacts created to promote safety on the highways.[7] At that time, Congress reaffirmed the principle that primary responsibility for traffic safety rests with the state and suggested the use of compacts as a way of achieving more effective interstate cooperation. The Council of State Governments, *Interstate Compacts for Traffic Safety: The Driver License Compact and The Vehicle Equipment Safety Compact*, (January 1962).

> The interstate compact is the most formal, binding and stable kind of arrangement for cooperative action by the states. A compact must be ratified by state legislative action. It is in the nature of a contract among the signatory states. The compact agreement is legally binding and may be enforced in the courts. And the compact remains in force for a ratifying state until the party state formally withdraws.

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[7] Interstate Compacts for Highway Safety, Pub. L. No. 85-684, 72 Stat. 655 (Aug. 20, 1958) as amended by 72 Stat. 655, 78 Stat. 564 (Aug. 20, 1964), provided: "that the consent of Congress is hereby given to any two or more of the several states, and one or more of the several states and the District of Columbia, to enter into agreements or compacts – (1) for cooperative effort and mutual assistance in the establishment and carrying out of traffic programs, including but not limited to, the enactment of uniform traffic laws, driver education and training, coordination of traffic law enforcement, research into safe automobile and highway design and research programs of the human factors affecting traffic safety, and (2) for the establishment and carrying out of such traffic safety programs."

Id. at 2. The Driver License Compact is thus a constitutionally based, Congressionally authorized agreement, which is federal law, binding on the party states. "The construction of a compact sanctioned by Congress under Art. 1, § 10, cl. 3 of the Constitution presents a federal question." *Petty v. Tennessee-Missouri Bridge Commission*, 359 U.S. 275, 278 (1959); *New York v. Hill*, 528 U.S. 110, 111 (2000).

The intention of the drafters of the Driver License Compact was for each state to determine its own sanctions for driving offenses, for the residents of each state to be treated equally for the same conduct regardless of where the conduct occurred, and for persons revoked in a foreign state to be able to apply for reinstatement in the home state according to the law of the home state. The legislative intent behind the Compact is clarified in the comments of by the Council of State Governments in the *Interstate Compacts for Traffic Safety: The Driver License Compact and The Vehicle Equipment Safety Compact* (January 1962). Specifically of interest to the question here, the Council stated:

> The Compact does not require the home state to follow another state's laws, there is no relinquishment of authority by one party state to another. The conduct on which an out-of-state conviction is based is treated as if it had occurred in the home state. Under the home state's laws, the conduct may constitute a less serious offense, a more serious offense, or no offense at all. In any event, only the laws of the home state apply for purposes of suspension, revocation, or limitation of the driver's license. Under the Compact, all drivers licensed by a state are accorded equal treatment under that state's laws regardless of

> where their violations may occur. . . . The Compact also sets up safeguards against the issuance of a license to an applicant whose driving privilege has been withdrawn in another party state until the period of suspension or revocation has terminated, or until one year after the date of revocation.

Id. at 4. Furthermore, with reference to Article V of the Compact, Applications for New Licenses, the Council of State Governments document states:

> Nevertheless, it is recognized that in the case of suspensions or revocations, the fact that a person has moved from the state of original licensure may make it unreasonable for him to take the steps which would result in the restoration of the license in that state. Consequently, the article adopts a one-year waiting period concept similar to that embodied in the Uniform Vehicle Code. After such a waiting period, a person may apply for a new license and may receive it. In such a case, however, the licensing authority may require an investigation to determine whether the applicant then is a driving risk.

Id. at 11. It is clear from the above cited comments from the Council of State Governments, that the intention in drafting the Compact was that each party state would be able to adopt its own laws and not be bound by the laws of other party states, and that each state's residents would be treated equally. It is also patent that the drafters of the Compact considered it unreasonable for a driver revoked by a foreign jurisdiction to have to apply for reinstatement in the foreign jurisdiction.

As a result of these considerations, the Compact provided that a person revoked in a foreign state may apply for a driver's license if "permitted by law."

The pertinent portion of the Compact states:

> The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:
>
> (1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.
>
> (2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part of a violation and if such revocation has not terminated, except that after one year from the date the license was revoked, such person may make application for a new license *if permitted by law*. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant such person the privilege of driving a motor vehicle on the public highways.

(Emphasis added). Md. Code Ann., Transp. II § 16-703, art. V (1977, 2002 Repl.Vol.).

"Permitted by law" appears to have been intended to allow a state to deny licensure to persons who may be disqualified for reasons *other than an existing foreign driver's license revocation*. For example a state may deny issuance of a license, to someone who fails to meet vision or other requirements uniformly applied to all state residents. This interpretation is consistent with the other

three reported opinions addressing this issue: *Welch v. Alabama Dept. of Pub. Safety*, 519 So.2d 517 (Ala. 1987); *State v. Vargason*, 607 N.W.2d 691 (Iowa 2000); and *Girard v. White*, 826 N.E.2d 517 (Ill.App. 2005).

In *Welch*, the Alabama Supreme Court resolved a similar statutory conflict in favor of the resident driver being able to apply for and be issued a license despite the out of state revocation. In *Welch*, the Alabama Court of Civil Appeals initially held that the language of Article V(2) of the Compact "if permitted by law" allowed Alabama to deny a driver's license to a person revoked in a foreign state under Ala. Code § 32-6-7 (1975), which stated, "A driver's license shall not be issued to the following persons . . . (3) Any person whose driving right or privilege is revoked." *Id.* The intermediate appellate court concluded, as did the Maryland courts below, that the application was not "permitted by law." *Id.*

The Alabama Supreme Court overturned this holding. In addition to finding that § 32-6-7 did not apply to extra-territorial revocations, *Welch* further noted that the interpretation by the Court of Civil Appeals, which is the same position taken by the Maryland Court of Appeals, is contrary to the terms of the Compact itself. 519 So.2d 517, at 519. The court stated with reference to the lower court's interpretation:

> First, under the Compact, the Department looks to other jurisdictions, and if the applicant has had his license revoked, he may not apply, except that he may do so after a year if "permitted by law." Second, to determine if an application is "permitted by law," the Court of Civil Appeals would have the licensing authority look *again* to the revocation made by the former licensing

> state. If the revocation is still in force under its own terms, an application for a new license could *never* be permitted by law under the Court of Civil Appeals' opinion until the original revocation expires.

Id. (Emphasis in original).

The Alabama court continued:

> The opinion of the Court of Civil appeals and the practice of the Department have the effect of changing the Compact language from "The licensing authority . . . shall not issue a license . . . if such revocation has not terminated, except . . . after the expiration of one year . . . ," to "The licensing authority . . . shall not issue a license . . . if such revocation has not terminated, except . . . after the termination of the revocation . . . ," and the exception allowing application after one year becomes meaningless and has no field of operation. Thus, the inquiry would end as soon as it is discovered that the license is revoked and the revocation has not expired. The drafters of the Compact cannot be presumed to have done a futile thing by inserting the exception in article V(2).
>
> > "A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error."
>
> *Sutherland Stat. Const.* § 46.06 (4th ed.).
>
> Thus, an examination of the terms of the Compact and the law of this state leads to the conclusion

> that the exception should be construed as allowing an application and investigation after a year even if a prior revocation has not expired.

Id. at 519.

> The Alabama Supreme Court concluded that:
>
> [A]n examination of the terms of the Compact and the law of this state leads to the conclusion that the exception should be construed as allowing an application and investigation after a year even if a prior revocation has not expired.

Id.

In *State v. Vargason*, 607 N.W.2d 691 (Iowa 2000), the Iowa Supreme Court also reviewed the legality of requiring a resident, revoked in a foreign jurisdiction, to obtain clearance from the foreign jurisdiction before obtaining a driver's license. Vargason, whose driver's license was also permanently revoked in Florida, challenged an Iowa regulation requiring clearance from the foreign jurisdiction before the driver was issued a license. The Iowa Supreme Court considered the Iowa version of the Compact, Iowa Code, § 321C, art. V(2), and the identical Compact language at issue here. The court first held that the Compact did not require Iowa to honor the foreign revocation. It stated:

> In fact, it appears that this issue is directly addressed in article V, which merely requires that an out-of-state revocation be honored for one year from the date of the revocation. *See* Iowa Code ch. 321C, art. V(2). At that point, the licensing state may make its own licensing decisions as permitted by the law of the licensing state. This provision would be superfluous if Iowa were required

> to give the Florida revocation binding effect in Iowa during the entire period of the Florida revocation.

Vargason, 607 N.W.2d at 697. Of relevance here the court also said:

> Having determined that an individual subject to an out-of-state revocation may apply for a license in Iowa "if permitted by law," we consider the State's contention that two Iowa statutes prevent the issuance of a license to Vargason. Iowa Code section 321.177 provides that the DOT shall not issue a license "[t]o any person whose motor vehicle license or driving privilege is suspended or revoked." Section 321.182 requires a person who makes application to the DOT to "[c]ertify that the applicant is not currently subject to suspension, revocation, or cancellation of any driver's license." The DOT asserts that it has given effect to these statutes by the promulgation of its administrative rule requiring that an applicant subject to an out-of-state revocation have an official letter of eligibility from the state issuing the revocation before the DOT will issue an Iowa license. *See* Iowa Admin. Code r. 761 – 601.1(3). Vargason contends that this rule conflicts with article V of chapter 321C that gives the out-of-state revocation only one year of binding effect. We agree.

Id. The Court held the rule violated the Compact.

> Nor can rule 761-601.1(3) be sustained on the basis of the interstate compact. As we have already decided, that statute does not preclude the issuance of an Iowa driver's license, if permitted by Iowa law, after a one-year period following the out-of-state revocation. In fact, the rule directly

> conflicts with chapter 321C by deferring Iowa licensing decisions to the out-of-state licensing authority in contravention to the compact, which merely requires that Iowa *consider* the out-of-state convictions as if they had occurred in Iowa in making its own licensing decisions. Because rule 761-601.1(3) is inconsistent with the statutes it purports to effectuate, it is invalid and unenforceable.

Id. at 698.

The third opinion that supports the petitioner, *Girard v. White*, 826 N.E.2d 517 (Ill.App. 2005), was issued four days after the opinion in the instant case. The driver in that case also had a permanent revocation from Florida as a result of four drunken driving convictions. He claimed that under the Compact he was eligible to be issued a driver's license. The Illinois court also examined the Compact, and held that the phrase "permitted by law" meant the reviewing court should look to Illinois law to determine eligibility for a license. The court affirmed the denial of the application for a license, because under Illinois law a person convicted four times of drunk driving was ineligible from being issued a license. The court said:

> In order to decide the question of whether Girard can apply for an Illinois driver's license, we need to interpret what the language "if permitted by law" in section 6-704 means and what authority that language and section 6-704 grant the Secretary in the application process of new residents; specifically, a new resident whose license has been revoked in another state.
>
> Section 6-704 is a discretionary grant of authority to provide relief to new residents by allowing the issuance of a driver's license when the

> application is consistent with relevant Illinois law. We interpret the phrase "if permitted by law" in section 6-704(2) to mean a license may be issued if such an application would be permitted under Illinois law and the Secretary determines that it will be safe to grant "such person the privilege of driving a motor vehicle on the public highways." 625 ILCS 5/6-704(2) (West 2000). We conclude Illinois law does not permit the application for or the issuance of a license to an applicant whose license or permit or privilege to drive upon the highway has been revoked because of four DUI convictions. 625 ILCS 5/6-208(b) (West 2000).

Id. at 521. Even though Girard was denied a license, the Illinois statute's determination of eligibility without reference to foreign law is permissible under the petitioner's reading of the Compact.

Thus the three cases that have considered the issue in the present case have reached an interpretation of the Compact that the law of the home state determines whether the application is "permitted by law." *Girard* is consistent with the petitioner's position, that the law of the home state determines eligibility for a license, but did not directly address the question presented here. However, *Welch* and *Vargason* specifically held that the Compact bars reliance on an out of state revocation as a basis for refusing to issue a driver's license. This directly conflicts with *Gwin*.[8]

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[8] Other cases have recognized the ability of a state's licensing bureau to issue a license to a driver who is revoked in another state under the Compact. *See, e.g., Bray v. Dept. Public Safety*, 638 So.2d 732 (La.App. 1994). Also of interest, is a decision from the Appellate Court

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The Maryland Court of Appeals concluded in *Gwin* that § 16-103.1 does not violate the Compact. The court noted that Maryland became a party to the Compact in 1987. Laws of Maryland 1987, Chapter 320. The Maryland version of the Compact is codified as Md. Code Ann., Transp. II § 16-703 (1977, 2002 Repl.Vol.). As noted, art. V(2) controls application for a new license of a person with an out of state revocation under the Compact. Section 16-703, art. V(2) requires the MVA to issue a license unless, "after investigation, the licensing authority determines that it will not be safe to grant such person the privilege of driving a motor vehicle on the public highways." At the same time however, § 16-103.1(1) prohibits the issuance of a license while the privilege to drive, "is revoked . . . *in this or any other state*." (Emphasis added). The "in this or any other state" language was added by the Maryland legislature in 1993, according to the Court of Appeals, in order to "codify" the MVA's existing policy of refusing individuals with out of state revocations. *Gwin*, 385 Md. at 457, 869

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of Illinois, *People v. Hutson*, 533 N.E.2d 1128, 1129 (Ill.App. 1989), where the court held:

> [T]he proper issuance of a foreign license under the Compact terminates an Illinois revocation in the same way that issuance of an Illinois license under section 6-208 of the Vehicle Code terminates an Illinois revocation. To find otherwise would arbitrarily assign an inferior position to persons relicensed in a foreign Compact state. It also would undervalue Illinois' commitment to reciprocity under the Compact.

The Petitioner is not here claiming that relief would undermine Florida's right to prohibit Gwin from driving in that state permanently. It is not necessary to decide that issue here. *Hutson* simply illustrates how state court interpretations of the Compact may differ.

A.2d at 822.[9] The court found after reviewing the applicable Maryland legislative history that the Maryland legislature intended to recognize and honor extra-territorial revocations in this way and that the Compact does not preclude application of harsher penalties. *Gwin*, 385 Md. at 465, 869 A.2d at 836. The *Gwin* court considered the *Welch* and *Vargason* opinions but distinguished the Alabama statute because it did not contain the "in this or in any other state" language. 385 Md. at 461, 869 A.2d at 834. Thus the court concluded that the ALJ was incorrect in ordering the MVA to process Gwin's driver's license application.

There are a number of flaws in the *Gwin* court's analysis. The petitioner agrees with the Court of Appeals that the Compact allows for penalties harsher than the one year minimum recognition of an out of state revocation. However, the petitioner disagrees that the harsher penalty may be derived from the law of the foreign revoking state. Although the Alabama statute was construed as not applying to extra-territorial revocations, that interpretation was not the sole basis for the *Welch* opinion. Rather the *Welch* court based its decision, that conditioning licensure on reinstatement in the revoking foreign jurisdiction would violate the Compact, on a close examination of the Compact language. The *Vargason* court reached a similar conclusion, holding that the Iowa regulation, which like Maryland's statute, required reinstatement in the foreign jurisdiction as a prerequisite to the issuance of

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[9] The Alabama Supreme Court in *Welch* interpreted its statute, with language virtually identical to the earlier version of the Maryland statute, as *not* applying to extraterritorial revocations. *Welch*, 519 So.2d at 519.

a license, was unenforceable because it conflicted with the Compact. By Md. Code Ann., Transp. II § 16-103.1 uniquely referring back to the revocation in the foreign state, it violates the language and spirit of the Compact.

In its analysis, the *Gwin* court seems to cite with approval a quote from *Welch*:

> If the revocation is still in force under its own terms, an application for a new license could *never* be permitted by law . . . until the original revocation expires. *Id.* at 519.

Gwin, 385 Md. at 460, 869 A.2d at 833. The full quote in the original Alabama opinion reads differently, and has the opposite meaning.

> If the revocation is still in force under its own terms, an application for a new license could *never* be permitted by law under the Court of Civil Appeals' opinion until the original revocation expires.

Welch, 519 So.2d at 519 (emphasis in original). While the *Gwin* court used this quote to justify upholding the Maryland statute, the *Welch* court used it to explain why such a provision would violate the Compact.

There are a number of other reasons why a state may not, consistent with Article V(2) of the Compact, rely on foreign law in deciding eligibility for a driver's license. The drafters of the Compact recognized it would be "unreasonable" to require an individual to seek reinstatement in a foreign jurisdiction. *Interstate Compacts for Traffic Safety: The Driver License Compact and The Vehicle Equipment Safety Compact* (January 1962) at 11. Additionally, under the *Gwin* analysis, all member states are free to opt out of

Article V(2). The drafters of the Compact could not have intended to allow Article V(2) to have no effect – a point made by the Alabama Supreme Court in *Welch*. If individual states are free to opt out of Article V(2), then those states electing to allow reinstatement of drivers with extra-territorial revocations would have to shoulder a disproportionate share of the expense of processing those reinstatement applications. Requiring residents to seek reinstatement in the revoking jurisdiction causes a disparity in treatment among similarly situated applicants in the home state. For example, Maryland has no permanent revocation like Florida or disqualification after four drunken driving convictions like Illinois. As detailed *infra* at note 4, Maryland will require a person who suffers from alcoholism to obtain clearance from the Maryland MVA's Medical Advisory Board. *See*, Md. Regs. Code tit. 11 § 17.03.04 I(3). Under this provision in order to recommend issuing a license to an alcoholic driver the Medical Advisory Board of the MVA requires proof of six months of sobriety, six months of alcohol treatment, and six months of regular attendance at a self-help program such as Alcoholics Anonymous (AA). The longest required wait from the date of revocation to the date of application for a license in Maryland, on a fourth revocation, is two years. Md. Code Ann., Transp. II § 16-208 (1977, 2002 Repl.Vol.).[10] Since Gwin was revoked more than twenty

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[10] The waiting periods for application for reinstatement under Md. Code Ann., Transp. II § 16-208 (1977, 2002 Repl.Vol.) are as follows: six months for a first revocation, and the person may apply the day after the revocation is imposed; one year for a second revocation; 18 months for a third revocation; and two years for a fourth revocation. In *Gwin*, the Court of Appeals assumed that the petitioner would not be eligible for two years after the revocation was imposed, 385 Md. at 459, 869

(Continued on following page)

years ago, he would presently be eligible to apply for reinstatement under the law if the underlying conduct and revocations had occurred in Maryland. Under Florida and Illinois law however, he is permanently ineligible to apply for reinstatement of his driver's license. This disparity among residents of the home state is contrary to the Compact's intent to have home states treat all residents similarly, as if the underlying conduct had occurred in the home state. The Council of State Governments, *Interstate Compacts for Traffic Safety: The Driver License Compact and The Vehicle Equipment Safety Compact* at 4; *Welch*.

Under the reasoning of *Gwin*, it is permissible to deny a license to a person who would not be disqualified from obtaining a license if the underlying offense had occurred in Maryland. It is possible under *Gwin*, for a driver to be trapped in a "Catch 22" situation where he is revoked in two states, with neither willing to reinstate the driver until the other state does. Under *Gwin*, it is also possible to permanently deny a license to a person who presents no current safety risk. Statutes are generally interpreted to avoid absurd results. *In re Chapman,* 166 U.S. 661, 667 (1897). These hypothetical results were not intended when the Compact was drafted and are contrary to the opinions of the other state appellate courts that have considered this issue, but are allowed by the Court of Appeals' interpretation of the Compact in *Gwin*.

The language of the Compact, allowing an application for a driver's license if "permitted by law," requires the home state to look to its own laws to determine eligibility

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A.2d at 832, but § 16-208 applies a two year waiting period to a fourth *revocation*, not a fourth drunken driving conviction.

for a license. *Welch*, *Vargason*, *Girard*. However, Maryland's law requires the Maryland MVA to look to the foreign state and its law to determine eligibility for a license. This is the essence of its flaw. The *Gwin* opinion squarely conflicts with the opinions of the Supreme Courts of Alabama and Iowa. For these reasons it is desirable for this Court to review the different interpretations of the Driver License Compact and resolve them in favor of the petitioner.

CONCLUSION

For the reasons set forth herein, the petitioner requests this Court grant the petition for a writ of certiorari.

Respectfully submitted,

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June 7, 2005

APPENDIX

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APPENDIX A

IN THE COURT OF APPEALS OF MARYLAND

No. 91

September Term, 2004

Norris Emmett Gwin

v.

Motor Vehicle Administration

Circuit Court for Anne Arundel County
Case # C04-95540

Bell, C. J.
Raker
Wilner
Cathell
Harrell
Battaglia
Greene,

JJ.

Opinion by Cathell, J.

Filed: March 10, 2005

This appeal stems from the denial by respondent Maryland Motor Vehicle Administration ("MVA") of the April 8, 2003, application made by petitioner, Norris Emmit Gwin, for a Maryland driver's license. As of the

date petitioner made his application, his driver's license had been revoked both in Illinois and in Florida and the MVA denied his application on the basis of Md. Code (1977, 2002 Repl. Vol.), § 16-103.1(1) of the Transportation Article, which prohibits the MVA from issuing a license "[d]uring any period for which the individual's license to drive is revoked . . . in this or any other state." Petitioner sought review in the Maryland Office of Administrative Hearings ("OAH") of the MVA's failure to process his license application and in a hearing on January 15, 2004, before an Administrative Law Judge ("ALJ"), petitioner was granted his requested relief and the MVA was ordered to process petitioner's application for a driver's license. On February 10, 2004, the MVA filed a Petition for Judicial Review in the Circuit Court for Anne Arundel County. Following argument, the trial court issued a written opinion on August 5, 2004, reversing the decision of the ALJ. Thereafter, petitioner filed a Petition for Writ of Certiorari with this Court which we granted on November 29, 2004. *Gwin v. Motor Vehicle Administration*, 383 Md. 569, 861 A.2d 60 (2004).

Petitioner presents the following question for our review, to which we have added a second question to reflect the more narrow issue as presented to the trial court:

1. "[Does] the Driver License Compact[, Md. Code (1977, 2002 Repl. Vol.), § 16-703 of the Transportation Article] allow[] a Maryland resident with a permanent revocation of his Florida driver's license to apply for a Maryland driver's license after serving one year of the revocation?"

2. Does Md. Code (1977, 2002 Repl. Vol.), § 16-103.1(1) of the Transportation Article, conflict with the Driver License Compact, found at Md. Code (1977, 2002 Repl. Vol.), § 16-703 of the Transportation Article? [Alterations added.]

As we have reframed the focus of this case, we hold that there is no conflict between Md. Code (1977, 2002 Repl. Vol.), § 16-103.1(1) of the Transportation Article, which permits the MVA to deny a driver's license to an individual whose driver's license has been revoked in Maryland or any other state, and the Driver License Compact, found at Md. Code (1977, 2002 Repl. Vol.), § 16-703 of the Transportation Article. The clear legislative intent of these two statutes indicates that Maryland law recognizes extraterritorial license revocations and the MVA is not permitted to issue a license to an individual whose license has been permanently revoked in another jurisdiction, even after a period of one year of the revocation.

I. Facts

Petitioner, currently a Maryland resident, completed an Application for a Maryland Non-Commercial Driver's License on April 8, 2003, in pursuit of a Maryland driver's license. In response to question number four on the application, which states, "Is your driver's license or privilege to drive suspended, revoked, refused or cancelled in this or any other state, Washington D.C., or Canada?" petitioner indicated in the affirmative. A bolded statement printed on the application immediately adjacent to the question four response area reads, **"If yes, you are not eligible for a Maryland driver's license."** This statement appears in

response to Md. Code (1977, 2002 Repl. Vol.), § 16-103.1(1) of the Transportation Article, which states:

> **"§ 16-103.1. [Persons not to be licensed] – Disqualifications.**
>
> The Administration may not issue a driver's license to an individual:
>
> (1) During any period for which the individual's license to drive is revoked, suspended, refused, or canceled in this or any other state, unless the individual is eligible for a restricted license under § 16-113 (e) of this subtitle. . . ." [Alteration added.]

Petitioner's rather dismal driving record indicates that he has four convictions for driving under the influence of alcohol or drugs ("DUI") for which he received a license revocation in Illinois and a permanent license revocation in Florida[1] It is unclear precisely how long

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[1] Petitioner appears to have received one DUI conviction in either Arkansas or Illinois in November 1976, and received DUI convictions in Florida in 1972, 1975 and 1984. Although there is indication in his Florida Driver History Record that the 1976 DUI offense occurred in Arkansas, the parties have indicated that the 1976 DUI resulted in revocation of petitioner's Illinois license. It is unclear where petitioner was living at that time. The 1984 conviction, when petitioner was presumably a Florida resident, was petitioner's fourth, and under Florida law, the result is permanent license revocation.

The MVA provided in its brief a synopsis of the history of Florida's permanent revocation statute:

> "Until 1998, Fla. Stat. Ann. §§ 322.28(2)(e) and 322.271(4) (1997) provided that a person whose license was permanently revoked, based on four or more convictions of driving under the influence of alcohol, might be reinstated after 5 years with restrictions, if the person could demonstrate specific conditions and remedial treatment. *State Dep't of Highway Safety & Motor Vehicles v. Fountain*, [883]

(Continued on following page)

petitioner has resided in Maryland, but it appears to be at least since April 2000 given that petitioner's MVA record indicates that on April 6, 2000, he secured a Maryland State Identification card,[2] which is valid for five years.

The MVA declined to consider petitioner's application for a driver's license, noting on petitioner's application that he would "need clearance letters from the [Florida]

So.2d 300, 301 (Fla.App.1 Dist. 2004). Florida amended § 322.271 (4) in 1998 to delete this option for drivers permanently revoked for four or more DUI's. *Id.* In 2003 the Florida Supreme Court found the amendment unconstitutional for violating the same subject matter bill requirement. For a time between that date and the date the Florida legislature reenacted the amendment, the statute prior to the change remained in effect. Persons subject to permanent revocation for DUI again had an opportunity to apply under the prior statute for reinstatement on conditions. *Id.* The Florida legislature properly reenacted the amendment [effective July 1, 2003], *Id.*, so at this time the provision for reinstatement is not available." [Alterations added.]

There is no indication that petitioner sought reinstatement of his Florida driver's license during any of the periods when reinstatement was available to him. The currently enacted Fla. Stat. Ann. § 322.28, effective July 1, 2003, states, in relevant part, as follows:

"322.28. Period of suspension or revocation

. . .

(e) The court shall *permanently revoke the driver's license or driving privilege of a person who has been convicted four times* for violation of § 316.193 [driving under the influence of alcoholic beverages or any chemical substance] or former § 316.1931 [repealed statute that provided punishment for driving an automobile while intoxicated] or a combination of such sections." [Alterations added.] [Emphasis added.]

[2] Such a card, issued by the MVA, is solely for the purpose of identification. It does not convey or provide any driving privilege in this or any other state.

and [Illinois] DMV[s]" (alterations added). In a letter from petitioner's counsel, dated April 9, 2003, one day after petitioner's license application was denied by the MVA pursuant to § 16-103.1, petitioner requested a hearing in the Office of Administrative Hearings. A hearing was scheduled for May 27, 2003, at which petitioner failed to appear, and, upon petitioner's request, a later hearing was scheduled for January 15, 2004. At the January 2004 hearing, petitioner appeared with his attorney before Mary Shock, Administrative Law Judge; no representatives from the MVA appeared, and the MVA proceeded on the documents it had submitted. Petitioner argued that the Interstate Driver's License Compact ("Compact"), into which Maryland had entered in 1987,[3] *see* 1987 Md. Laws, Chap. 320, codified at Md. Code (1977, 2002 Repl. Vol.), § 16-703 of the Transportation Article, supercedes Md. Code (1977, 2002 Repl. Vol.), § 16-103.1 of the Transportation Article and, effectively, compels the MVA to conduct an investigation of petitioner's fitness to drive a motor vehicle, and upon a satisfactory assessment, to issue petitioner a Maryland driver's license after he has served one year of the permanent revocation of his Florida license. Following the conclusion of petitioner's testimony and counsel's argument, the ALJ found that:

> "[Petitioner has] been revoked in Illinois since 1982 and in Florida since 1984. And the Florida revocation is a lifetime revocation, so you are unable to have that cleared in order to apply for a license or to overcome the disqualification section of 16-103.1. But I have considered the Article [V]

[3] When Maryland entered the Compact in 1987, it became one of 36 participating jurisdictions, including Maryland's neighbors: Delaware, Virginia, Washington, D.C., and West Virginia.

> of the [C]ompact entered into with other jurisdictions. Article [V], Section 2, states if such revocation is not terminated, except after the applicant has held a license, but the same has been revoked by reason in whole or in part of a violation and if such revocation is not terminated except after an expiration of one year from the date the licensee was revoked, such person may make an application for a new license if permitted by law. And the licensing authority has the authority to refuse but an investigation must be performed. Even the disqualification section of 16-103.1 does not – although in the end it conflicts it does not prevent the application and the investigation[.] [S]o I will order that the MVA process the licensee's application for a driver's license because it's been more than a year since the revocation." [Alterations added.]

On February 11,2004, the MVA sought judicial review in the Circuit Court for Anne Arundel County of the ALJ's determination. The trial court examined the issue in terms of whether § 16-103.1 conflicts with § 16-703, and if there is a conflict, which statute prevails. In a decision dated August 5, 2004, the trial court reversed the ALJ and determined that the statutes did not conflict, and instead were intended to act in concert. The trial court reasoned that the language of § 16-103.1 evinces the General Assembly's intent to provide "recognition of extraterritorial revocations beyond that which the Compact recognizes" and § 16-103.1 "provides the MVA with a mechanism to recognize revocations of non-Compact states and deny issuance of a license on that basis."

II. Standard of Review

Our review of this case is enabled by Md. Code (1984, 2004 Repl. Vol), § 10-222 of the State Government Article, which provides in relevant part as follows:

> "(h) *Decision.* – In a proceeding under this section, the court may:
>
> (1) remand the case for further proceedings;
>
> (2) affirm the final decision; or
>
> (3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision:
>
> (i) is unconstitutional;
>
> (ii) exceeds the statutory authority or jurisdiction of the final decision maker;
>
> (iii) results from an unlawful procedure;
>
> (iv) is affected by any other error of law;
>
> (v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
>
> (vi) is arbitrary or capricious."

In undertaking judicial review, "the [c]ircuit [c]ourt is limited to determining whether there was substantial evidence on the record as a whole to support the agency's findings of fact and whether the agency's conclusions of law were correct." *Motor Vehicle Admin. v. Atterbeary*, 368 Md. 480, 490-91, 796 A.2d 75, 81 (2002) (alterations added); *United Parcel Service, Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 577, 650 A.2d 226, 230

(1994). "[W]e reevaluate the decision of the agency under the same statutory standards as would the circuit court, and we do not employ those standards to reevaluate the decision of the circuit or intermediate appellate court." *Charles County Dep't of Social Servs. v. Vann*, 382 Md. 286, 294, 855 A.2d 313, 318 (2004). *See Spencer v. Maryland State Bd. of Pharmacy*, 380 Md. 515, 523-24, 846 A.2d 341, 346 (2004); *Division* of *Labor v. Triangle General Contractors, Inc.*, 366 Md. 407, 416, 784 A.2d 534, 539 (2001); *Dep't of Health v. Campbell*, 364 Md. 108, 123, 771 A.2d 1051, 1060 (2001) (noting that it is the final decision at the administrative level, not the decision of the previously reviewing court, which is the focus of each level of judicial review).

Our review is narrowly focused and we do not substitute our "judgment for the *expertise* of those persons who constitute the administrative agency from which the appeal is taken." *Bernstein v. Real Estate Comm'n. of Md.*, 221 Md. 221, 230, 156 A.2d 657, 662 (1959) (footnote omitted), *appeal dismissed*, 363 U.S. 419, 80 S.Ct. 1257, 4 L.Ed.2d 1515 (1960); *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 513, 390 A.2d 1119, 1124 (1978); *United Parcel Service, Inc.*, 336 Md. at 576-77, 650 A.2d at 230. As we explained many years ago in *Bernstein:*

> "Generally, when the entire record shows that the findings of fact and conclusions of law are supported by competent, material and substantial evidence taken before the agency and such *de novo* evidence, if any, as may be taken by the court, and such findings and conclusions are not against the weight of such evidence, it is the function of the court to affirm the order of the agency or remand the case for further proceedings if that be necessary. On the other hand, if

> the court should find that the substantial rights of a petitioner for review have been prejudiced, by one or more of the causes specified in § [10-222 of the State Government Article], because of an administrative finding, inference, conclusion or decision, then it is the function of the court to reverse or modify the order."

221 Md. at 230, 156 A.2d at 662 (alteration added).

III. Discussion

Turning to the case before this Court, petitioner contends that the Driver License Compact, Md. Code (1977, 2002 Repl. Vol.), § 16-703 of the Transportation Article, trumps the allegedly conflicting Md. Code (1977, 2002 Repl. Vol.), § 16-103.1 of the Transportation Article. Specifically, in support of his position that "application for a new license, after the expiration of one year from the date a license was revoked by another state, may be made if permitted by law," petitioner points to Article V of the Compact, with particular focus on Article V(2), which governs Applications for New Licenses:

> "Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:
>
> (1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

> (2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of 1 year from the date the license was revoked, such person may make application for a new license *if permitted by law.* The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways." [Emphasis added.]

The MVA responds that petitioner is incorrect in his assertion that § 16-703 Article V(2) "absolutely requires a party state to find individuals still revoked in other states eligible for licensure after one year." The MVA continues that petitioner's "assumption ignores savings language in the same Compact provision, providing that the minimum one-year eligibility must yield to a party state's other law prohibiting eligibility and licensure in those circumstances." That is, the MVA urges that the inclusion of the phrase "if permitted by law" found in Article V(2) functions as a savings clause, "recognizing that member states, such as Maryland, may have stricter licensure prohibitions that *affect* the out-of-state revoked driver's eligibility." This savings clause, according to the MVA, modifies solely "the exception permitting the applicant to apply for (and obtain) a license while still revoked in another state . . . " and serves to harmonize the provisions of the Compact

with Maryland's other motor vehicle laws, including § 16-103.1.[4]

A. License Application Processing and Denial

Petitioner draws a distinction between application for a new license and issuance of a new license and narrowly focuses his appeal on the issue of whether "[p]etitioner is *eligible* to apply for a Maryland driver's license and have an investigation conducted by the MVA" to determine petitioner's fitness as a safe driver (emphasis added). It is the distinction between application and licensure on which petitioner bases his contention that the MVA may issue a license after the expiration of one year from the date a license was revoked by another state. Petitioner goes on to note that the ALJ simply ordered that the MVA process petitioner's application for a license, and consideration of petitioner's eligibility to be *issued* a license is "not yet ripe for appeal: 1) because the investigation has not been conducted to determine whether it would be safe under Maryland law to issue him a license; and 2) the ALJ did not order the MVA to issue [petitioner] a license" (alteration added). Petitioner is essentially arguing that he should be considered for licensure and that, upon investigation, is confident that he ultimately will be issued a license in Maryland. In a letter to the OAH dated April 9, 2003, one day after petitioner's license application was denied by MVA pursuant to § 16-103.1, petitioner's counsel

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[4] The MVA observes that § 16-103.1, prohibiting the MVA from licensing an applicant whose driving privileges are revoked in another state, also "dovetails" with § 16-303(a) through (g), which prohibits a person from driving a motor vehicle on Maryland's highways while that individual's driving privileges are refused, canceled, suspended or revoked in Maryland or any other state.

indicated his belief that he would prevail under the scrutiny of an investigation into his fitness:

> "Mr. Gwin is confident he will pass such an investigation and is willing to comply with any and all conditions that may be deemed necessary to protect the public safety. Although he does have a serious alcohol problem, he has been abstinent since January 20, 2000. At that time he went into detox at Sinai Hospital in Baltimore for 3 or 4 days. From there he went to Reality House in Laurel for 45 days. From there he moved to a Transitional Rehabilitative Residence (TRR) for 14 months. Since leaving the TRR he has been attending 2 to 3 AA meetings per week and has stayed alcohol free."

The MVA disputes that this issue is not yet ripe, and classifies that which petitioner deems a failure to *process* the license application, as an actual *denial* of petitioner's license application. According to the MVA, its denial of the license application relegates petitioner's demand for an investigation irrelevant. The MVA notes that petitioner "challenged the authority of the MVA to deny his application under [§ 16-103.1], thereby initiating the contested case presently before this Court" (alteration added).

The occurrence which we have been asked to review has already taken place and "[t]his Court has defined a justiciable controversy as one wherein 'there are interested parties asserting adverse claims *upon a state of facts which must have accrued* wherein a legal decision is sought or demanded.'" *Boyds Civic Ass'n v. Montgomery County Council*, 309 Md. 683, 690, 526 A.2d 598, 601 (1987) (emphasis added) (quoting *Patuxent Co. v. County Comm'rs*, 212 Md. 543, 548, 129 A.2d 847, 849 (1957) (quoting 1 W.H. Anderson, *Actions for Declaratory Judgments* §§ 17 (2d ed.

1951))). Moreover, we are confronted with the issue of a possible conflict between statutes applicable to petitioner and applied by respondent, and their dispute as to the proper application of the statutes is a recognition of the existence of a contested case and, indeed, places the issues squarely before us. Thus, our review is appropriate because "there is either an actual existing controversy, or antagonistic claims which indicate inevitable litigation, or when a party asserts a legal status or right and there is a denial by an adversary party, and the court is satisfied that such a decree will serve to terminate the controversy." *Eberts v. Congress'l Country Club*, 197 Md. 461, 465, 79 A.2d 518, 519 (1951).

B. License Disqualifications

The statutory provision containing the disqualification from licensure of a person whose driving privileges are revoked elsewhere emerged in 1970 as part of the Legislature's comprehensive repeal and reenactment of Maryland's Motor Vehicles Laws. *See* 1970 Md. Laws, Chap. 534. This disqualification, as found in the former Md. Code (1970), Art. 66½ § 6-103 (2), stated, in pertinent part:

> **"§ 6-103. What persons shall not be licensed.**
>
> The department shall not issue any license under this subtitle:
>
> . . .
>
> 2. To any person whose license has been suspended, refused, or cancelled, during the suspension, refusal, or cancellation, or to any person whose license has been revoked."

Later, in 1977, the Legislature repealed Article 66½ and reenacted it as Titles 11 through 27 of the Transportation Article. *See* 1977 Md. Laws, Chap. 14. The license disqualification provisions were left largely intact and were supplemented also to bar licensure to anyone whose license had been *revoked*. The relevant portion of the statute appeared as follows:

> **"§ 16-103.1. Persons not to be licensed – Disqualifications.**
>
> The Administration may not issue a driver's license to an individual:
>
> (1) During any period for which his license to drive is revoked, suspended, refused, or canceled. . . ."

Owing to ambiguity in the manner in which the word "license" is defined in the Transportation Article,[5] the Legislature in 1993 Md. Laws, Chap. 209, clarified and

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[5] Md. Code (1977, 2002 Repl. Vol.), § 11-128 of the Transportation Article defines a license to drive as follows:

> **"§ 11-128. License (to drive).**
>
> 'License', as used in reference to the operation of a motor vehicle, means any:
>
> (1) Driver's license; and
>
> (2) Any other license or permit to drive a motor vehicle that is issued under or granted by the laws of this State, including:
>
> . . .
>
> (iv) The privilege of any individual to drive a motor vehicle, whether or not that individual is formally licensed by this or any other jurisdiction;
>
> (v) Any nonresident's privilege to drive, as defined in this subtitle. . . ."

augmented § 16-103.1(1) to articulate the intent that the disqualification apply both to Maryland and to out-of-state licensees whose license had been revoked, suspended, refused or canceled, and to provide an exception allowing restricted licensure under certain circumstances. The Floor Report and Bill Analysis accompanying 1993 Md. Laws, Chap. 209, indicated that the definition of "license" as the privilege to drive in Maryland obscured whether the provisions of § 16.103.1 applied to a person whose license had been revoked, suspended, refused or canceled in another jurisdiction. The bill was intended to codify the MVA's *de facto* policy of not issuing a license to any such disqualified individuals, to provide the MVA with clear authority to refuse to license such persons, and to eliminate any confusion in the law. This revision reads:

> **"§ 16-103.1. [Persons not to be licensed] – Disqualifications.**
>
> The Administration may not issue a driver's license to an individual:
>
> (1) During any period for which the individual's license to drive is revoked, suspended, refused, or canceled *in this or any other state*, unless the individual is eligible for a restricted license under § 16-113 (e)[6] of this subtitle. . . ."

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[6] Md. Code (1977, 2002 Repl. Vol., 2004 Supp.), § 16-113 (e) of the Transportation Article, provides that the MVA may issue a restricted license as follows:

> **"§16-113. Restricted licenses.**
>
> . . .
>
> (e) 'Maryland only' license. – (1) In addition to the other restrictions provided under this subtitle, the Administration may issue:

(Continued on following page)

[Alteration added.] [Emphasis added.] [Footnote added.]

C. The Driver License Compact

In recognition of the interaction of motor vehicle laws among states and the possibility for conflicting outcomes, the Maryland Legislature passed 1987 Md. Laws, Chap. 320 to become a part of the Driver License Compact. Chapter 320's introductory statement reveals the underlying

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(i) A driver's license that is valid only in the State of Maryland to an applicant who has been suspended in another jurisdiction as a result of failing to comply with the financial responsibility requirements of that jurisdiction; or

(ii) A temporary driver's license that is valid only in the State of Maryland to an applicant for reinstatement of a suspended or revoked driver's license, renewal of a driver's license, or a duplicate or corrected driver's license if, at the time of application:

1. The applicant's privilege to drive in another jurisdiction is revoked or suspended as a result of failing to comply with the licensing requirements of that jurisdiction for which a comparable violation in this State would not have resulted in revocation or suspension;

2. The initial violation that led to the revocation or suspension did not occur within the preceding 5 years;

3. The applicant is otherwise qualified to be licensed in this State; and

4. The Administration determines that the applicant will be able to take any actions required by the other jurisdiction for reinstatement of the privilege to drive in that jurisdiction.

(2) A temporary license issued under paragraph (1) of this subsection shall be valid for 90 days."

It is unclear whether petitioner would be eligible for a restricted "Maryland only" license.

legislative intent for entering the Driver License Compact and reads, in relevant part, as follows:

> "FOR the purpose of providing for the State of Maryland to enter into a certain driver license compact with other jurisdictions in the United States; providing for the reporting and effect of certain convictions; prohibiting the Administration from assessing points against an individual under certain circumstances; requiring the Administration to assess points against an individual under certain circumstances; *prohibiting issuance of a driver's license under certain circumstances*; providing for the applicability of certain other laws. . . ."

The legislative intent is further highlighted by the statement of changes brought about by the bill as indicated in the Senate Judicial Proceedings Committee's Bill Analysis:

> "By this bill, the State of Maryland adopts the Driver License Compact. The Compact is a comprehensive interstate agreement designed to promote compliance with motor vehicle laws in the party states and to make the reciprocal recognition of licenses to drive and eligibility more just and equitable. The Compact provides, among other things, for comity among the party states in issuing licenses and for cooperation in reporting convictions of motor vehicle offenses."

D. Petitioner's License Revocations

Petitioner urges that the intent of the Compact, *i.e.*, "to give the MVA clear authority to refuse to issue a driver's license to a person whose driver's license has been suspended, revoked, refused or canceled in another jurisdiction," can be honored by the MVA's giving effect to an

out-of-state revocation for one year before a licensee can apply for a Maryland license.[7] In addition, petitioner contends that although his fourth DUI prompted permanent revocation of his driver's license in Florida, according to the language of the Compact Art. IV,[8] his DUI offenses, in respect to his application for licensure in Maryland, must be treated as if they occurred in Maryland.[9] He explains:

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[7] Under this argument, one year of petitioner's Florida-imposed revocation would have expired on April 6, 1984, *i.e.*, one year after his overall fourth DUI conviction.

[8] Md. Code (1977, 2002 Repl. Vol.), § 16-703 Art. IV, Effect of Conviction, states:

> "(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this Compact, [Reports of Conviction] as it would if such conduct had occurred in the home state, in the case of convictions for:
>
> . . .
>
> (2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle. . . ." [Alteration added.]

[9] Md. Code (1977, 2002 Repl. Vol., 2004 Supp.), §16-205 (a) of the Transportation Article, provides that:

> "(a) *evocation.* – The Administration may revoke the license of any person who:
>
> (1) Is convicted under § 21-902 (a) or (d) [of the Transportation Article, *i.e.*, Driving while intoxicated or under the influence of alcohol] of this article of driving or attempting to drive a motor vehicle while under the influence of alcohol. . . ." [Alteration added.]

The revocation and reinstatement parameters are specified in Md. Code (1977, 2002 Repl. Vol., 2004 Supp.), § 16-208 of the Transportation Article:

(Continued on following page)

> "[I]t is clear that the State of Maryland did not intend for out of state revocations to be mandatory in this State, for periods of time longer than would have been imposed had the crime occurred in Maryland. Such an argument is contrary to Maryland policy and the intent of the legislature. . . . The MVA has failed to show that the legislative intent was to give greater weight to the laws of foreign jurisdictions than to the laws of Maryland, by barring a Maryland citizen from obtaining a license in this State pursuant to a lifetime revocation in another state, when the same offense had it occurred in Maryland would have resulted in a much lighter sanction."

In essence then, as described by the trial court, petitioner believes that "[b]ecause § 16-103.1 broadly disqualifies any person who currently has a revoked license in another state without consideration of the comparable penalties in Maryland," the laws are in conflict. Thus, notwithstanding that a fourth DUI offense in Maryland leads to a minimum of two year's license revocation, petitioner would have us read § 16-103.1 as applying a less stringent penalty of one year's revocation, *via* the Compact's provisions, when an individual whose license

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> "(5) (i) If it is the individual's fourth or subsequent revocation, the individual may file a reinstatement application at any time after 2 years from the day the revoked license is surrendered to and received by the Administration or, in the case of an individual who does not have a license issued under this title, after 2 years from the effective date of revocation."

has been revoked by another jurisdiction becomes a Maryland resident and seeks licensure in this State.[10]

Petitioner relies extensively on *Welch v. Alabama Dep't. of Pub. Safety*, 519 So.2d 517 (Ala. 1987), for the proposition that the Compact should take precedence over related state law. In *Welch*, the Supreme Court of Alabama examined whether Alabama, a Compact state, could "issue a license before the expiration of a revocation period imposed by the State of an applicant's former residence." *Id.* at 517. Mr. Welch had his Florida license revoked for five years following his second DUI conviction. Upon moving to Alabama thirteen months after his Florida revocation, Welch's application for an Alabama driver's license was denied by the Alabama Driver License Division of the Department of Public Safety and Welch's attorney was informed that Welch would be required to obtain a letter of clearance from Florida before he would be granted a license. Welch brought suit, seeking an investigation to declare him a safe driver. The circuit court sided with the Division and Welch appealed. The intermediate appellate court looked to Ala.Code 1975 § 32-6-7, which states, "'A driver's license shall not be issued to the following persons: . . . (3) Any person whose driving right or privilege is revoked. . . .'" and interpreted Alabama's enactment of the Compact as incorporating extraterritorial revocations, a finding that the Supreme Court of Alabama found to be erroneous. *Id.* at 519. After considering Art.

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[10] We realize that petitioner's Florida revocation occurred more than twenty years ago, but as petitioner apparently made no efforts at reinstatement during those two decades, it is somewhat irrelevant that his *particular* revocation actually lasted more than one year or two years.

V(2) of the Compact addressing "Application for New Licenses," the Supreme Court of Alabama determined that the Compact's language did not intend to incorporate "extraterritorial revocations, which are entirely outside the control of the legislature of [Alabama]. [T]he reading applied . . . such an interpretation would make any revocation by a Compact state, however severe, binding on the licensing authority of [Alabama]." *Welch*, 519 So.2d at 519 (alterations added). In reversing the intermediate appellate court, the Alabama high court went on to determine that the phrase, "if permitted by law," found in Article V(2), required the licensing authority to look "to the revocation made by the former licensing state. If the revocation is still in force under its own terms, an application for a new license could *never* be permitted by law . . . until the original revocation expires." *Id.* at 519.

In the case *sub judice*, petitioner offers *Welch* and several other cases[11] in support of his argument that the

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[11] These cases, from other Compact states, include *Bray v. Department of Pub. Safety*, 638 So.2d 732 (La.App. 1994) (upholding Louisiana Department of Public Safety and Corrections' refusal to issue a license to a former Florida driver whose license had been suspended in Florida for five DWI convictions, but finding that under the Compact licensee may seek a Louisiana license after one year of the Florida revocation, though the Department may refuse licensure pending the outcome of an investigation); *State v. Vargason*, 607 N.W.2d 691, 698 (Iowa 2000) (holding that driver whose privileges had been revoked in Iowa for six years and permanently in Florida was eligible for a restricted driver's license only through the district court and not through the motor vehicle agency but also finding that Iowa's specific disqualification "statute does not preclude the issuance of an Iowa driver's license, if permitted by Iowa law, after a one-year period following the out-of-state revocation"); and *People v. Hutson*, 533 N.E.2d 1128, 1129 (Ill.App.Ct. 1989) (finding that, under the Compact, the revocation of an Illinois licensee, who moved to Iowa, properly obtained an Iowa license and then moved back to Illinois where he was arrested while driving with

(Continued on following page)

Compact requires "a state's licensing bureau to issue a license to a driver who is revoked in another state." The MVA responds that the cases necessarily invoke the peculiarities of a particular state's law and are, therefore, inapplicable to the present case. We are not persuaded by *Welch* and the other cited cases. The Alabama statute in *Welch* regarding license disqualification lacks the explicit language "in this or any other state" that is found in Md. Code § 16-103.1 and which clearly encompasses extraterritorial revocations. As we have discussed, the "in this or any other state" qualifier was added to § 16-103.1 in 1993 in order to dispel any uncertainty as to the MVA's authority to refuse to license an applicant whose driving privileges are suspended, revoked, refused or canceled in another jurisdiction. In addition, petitioner concedes that licensure in Maryland would not terminate his permanent Florida revocation.

The MVA urges that petitioner's interpretation of the interplay of § 16-103.1 and § 16-703 is incomplete. The trial court summarized the MVA's position as follows:

> "[T]he words 'if permitted by law' are intended to harmonize Maryland requirements for a license with the uniformity efforts made by states entering the Compact. . . . [W]hen a driver has his license revoked in another jurisdiction, only after one year may he apply in Maryland, *and* only if Maryland law permits such an application. In this case, § 16-103.1 unambiguously prohibits issuance of a license to a person whose licence is

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expired Iowa license, was terminated by the Iowa license issuance and stating that "to find otherwise would arbitrarily assign an inferior position to persons relicensed in a foreign Compact state").

> presently revoked in another state. The MVA also claims this has been the long-standing interpretation of the two statutes. It concludes, suggesting that its position is more accurate because it compels drivers with blemished out-of-state records to clear those records before applying in Maryland; such a preliminary cleansing of out-of-state driving records was an intention of the drafters of the Compact."

The parties to the instant appeal propose our acceptance of competing views of statutory intent. Accordingly, we must examine the statutes before us, the Driver License Compact, § 16-703, as well as § 16-103.1, in terms of the larger statutory scheme, namely, the promotion of safety through the recognition of both our State's and extraterritorial motor vehicle laws. Neither the Compact, nor § 16-103.1, stands on its own and "we do not read particular language in a statute in isolation or out of context; rather, we construe statutory language in light of the Legislature's general purpose and in the context of the statute as a whole." *State v. Crescent Cities Jaycees Found., Inc.*, 330 Md. 460, 468, 624 A.2d 955, 959 (1993); *GEICO v. Insurance Comm'r*, 332 Md. 124, 132, 630 A.2d 713, 717 (1993). "[W]here statutes relate to the same subject matter, and are not inconsistent with each other, they should be construed together and harmonized where consistent with their general object and scope." *Bridges v. Nicely*, 304 Md. 1, 10, 497 A.2d 142, 146 (1985), *Crescent City Jaycees*, 330 Md. at 468, 624 A.2d at 959. We accept the presumption that the Legislature intended that which it enacted and "[n]either statute should be read . . . so as to render the other, or any portion of it, meaningless, surplusage, superfluous or nugatory." *GEICO*, 332 Md. at 132, 630 A.2d at 717; *Gillespie v. State*, 370 Md. 219, 222, 804

A.2d 426, 428 (2002); *Montgomery County v. Buckman*, 333 Md. 516, 524, 636 A.2d 448, 452 (1994); *Tracey v. Tracey*, 328 Md. 380, 387, 614 A.2d 590, 594 (1992); *D & Y, Inc. v. Winston*, 320 Md. 534, 538, 578 A.2d 1177, 1179 (1990); *State v. 149 Slot Machines*, 310 Md. 356, 361, 529 A.2d 817, 819 (1987); *Kindley v. Governor of Md.*, 289 Md. 620, 625, 426 A.2d 908, 912 (1981); *Moberly v. Herboldsheimer*, 276 Md. 211, 217, 345 A.2d 855, 858 (1975). Our interpretation of a statute should "seek to avoid constructions that are illogical, unreasonable, or inconsistent with common sense." *Frost v. State*, 336 Md. 125, 137, 647 A.2d 106, 112 (1994); *Comptroller of Treasury v. Fairchild Indus., Inc.*, 303 Md. 280, 288, 493 A.2d 341, 345 (1985). Moreover, principles of statutory construction dictate that "where the language of a statute is clear, courts may not insert or omit words to make the statute express an intention not evident in its original form." *Bridges*, 304 Md. at 10-11, 497 A.2d at 147.

We observed in *Toler v. Motor Vehicle Admin.*, 373 Md. 214, 817 A.2d 229 (2003) (finding that a licensed driver for whom driving constituted a significant part of employment may accumulate sixteen points before the MVA may suspend that individual's license) that " 'if the true legislative intent cannot readily be determined from the statutory language alone,' we may look to other indicia of that intent, including the structure of the statute, how it relates to other laws, its legislative history, its general purpose, and the 'relative rationality and legal effect of various competing constructions.' " *Id.* at 220, 817 A.2d at 233 (quoting *Witte v. Azarian*, 369 Md. 518, 525-26, 801 A.2d 160, 165 (2002)). Finally, "[i]n our endeavor to harmonize the provisions of all of the relevant statutes, this Court will prefer an interpretation that allows us to avoid

reaching a constitutional question." *Bank of America v. Stine*, 379 Md. 76, 86, 839 A.2d 727, 733 (2003); *see East Prince Frederick Corp. v. County Board of Comm'rs*, 320 Md. 178, 182, 577 A.2d 27, 29 (1990).

Our reading of the Compact and of § 16-103.1 compels us to agree with the MVA' s assessment of the two statutes. That is, § 16-103.1 authorizes the State of Maryland to recognize non-Maryland issued suspensions, revocations, refusals or cancellations by refusing to issue licenses for persons in those statuses, and to so recognize such suspensions, etc., does not create a conflict with the provisions of the Driver License Compact. The MVA states:

> "No conflict exists between [] § 16-103.1(1) and the Compact when the savings clause, 'if permitted by law,' in [] § 16-703 V(2) is given effect and interpreted to say what it clearly says: that a driver revoked in one party state will be eligible for licensure in a different party state one year after the revocation took effect, so long as he is otherwise permitted to do so by the laws of that party state. Giving effect to the words in V(2) 'if permitted by law' carries out the presumption that the legislature intended both statutes to be harmonized to give full effect to each. Indeed, ignoring the modifying terms 'if permitted by law' renders that language meaningless and superfluous." [Alterations added.]

This Court finds nothing in the wording of § 16-103.1 to indicate that it was intended to be subordinated to the Compact, nor do we find any statement in the language of the Compact found at § 16-703 to evidence an intent that the Compact was intended to supercede what may be viewed as more stringent state motor vehicle laws. Moreover, it is illogical to presume that the Legislature intended

with its entry as a Compact state to make Maryland a safe harbor for extraterritorial drivers who have incurred harsh penalties in their home state for motor vehicle violations. The MVA echoes this sentiment, observing that the Compact was not intended to encourage "the worst and most dangerous drivers to avoid the consequences of their conduct by simply moving into another party state." As the trial court observed, the Legislature's intent in specifically inserting into § 16-103.1 the phrase, "in this or any other state":

> "was to recognize and respect extraterritorial revocations. This language serves two rational purposes. First, it provides recognition of extra-territorial revocations beyond that which the Compact recognizes. Second, the language of § 16-103.1 provides the MVA with a mechanism to recognize revocations of non-Compact states and deny issuance of a license on that basis. Under [petitioner's] interpretation of these statutes, revocations from Compact states would have no prohibitive force and effect in Maryland after one year, while revocations from non-Compact states would have force and effect for a period of time consistent with the statute in the non-[C]ompact state. This was not the intent of the General Assembly in adopting the Compact." [Alteration added.]

We are likewise persuaded of the viability of the MVA's interpretation in light of two other provisions found in the Compact. First, § 16-703, Art. I, articulates an express intent that an applicant's out-of-state driving record be considered prior to licensure. Article I (b)(2) reads, in relevant part:

> "(b) It is the policy of each of the party states to:
>
> (1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.
>
> (2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states."

In addition, § 16-703, Art. VI, addresses the Applicability of Other Laws:

> "Except as expressly required by provisions of this Compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state."

This language indicates that the Compact is not intended to supercede the application of other – possibly more stringent – motor vehicle laws.

IV. Conclusion

The MVA properly denied petitioner's application for a Maryland driver's license based on the language of Md. Code (1977, 2002 Repl. Vol.), § 16-103.1(1) of the Transportation

Article, which prohibits the MVA from issuing a driver's license "[d]uring any period for which the individual's license to drive is revoked . . . in this or any other state." This provision clearly intended to encompass revocations of the license of both Maryland and out-of-state drivers. Section 16-103.1(1) does not conflict with the provisions of the Driver License Compact, Md. Code (1977, 2002 Repl. Vol.), § 16-703 of the Transportation Article, which allows a licensee, revoked elsewhere, to apply for a Maryland license after the expiration of one year of the out-of-state revocation. The intent of these enactments was to advance motor vehicle safety and the stricter Maryland laws do not undermine the provisions of the Compact.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY PETITIONER.

APPENDIX B

MOTOR VEHICLE ADMINISTRATION	*	IN THE
	*	CIRCUIT COURT
Appellant		FOR
V.	*	ANNE ARUNDEL
NORRIS E. GWIN	*	COUNTY
Appellee		CASE NO. C-2004-95540

* *

MEMORANDUM OPINION AND ORDER

This matter came before the Court on June 28, 2004 on the Motor Vehicle Administration's (MVA) appeal from the January 15, 2004 decision of Administrative Law Judge (ALJ) Mary Shock ruling in favor of Norris E. Gwin (Appellee). Both parties filed Memoranda of Law to support their respective positions. The Court heard arguments of counsel and held the matter *sub curia.*

FACTS

In April 2003 Appellee applied for a Maryland driver's license through the Maryland Motor Vehicle Administration (MVA). At the time of his application, his driving privileges were revoked in Illinois and Florida. The revocations in both states were due to multiple drunk driving convictions and both were imposed against him in the early 1980s.[1] Upon learning of these out-of-state revocations, the MVA

[1] Appellee received the Illinois revocation in 1982, and the Florida revocation, which is a permanent lifetime revocation, in 1984. The Florida revocation was a penalty for Appellee's third drunk driving offense.

denied Appellee's Maryland driver's license application pursuant to Md. Code Ann., Transp. II § 16-103.1. That provision states:

> § 16-103.1. Persons disqualified, generally
> The Administration may not issue a driver's license to an individual:
>
> (1) During any period for which the individual's license to drive is revoked, suspended, refused, or canceled in this or any other state, unless the individual is eligible for a restricted license under § 16-113(e) of this subtitle;[2]

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[2] § 16-113(e) permits the MVA to issue:

(i) a driver's license that is valid only in the State of Maryland to an applicant who has been suspended in another jurisdiction as a result of failing to comply with the financial responsibility requirements of that jurisdiction; or

(ii) A temporary driver's license that is valid only in the State of Maryland to an applicant for reinstatement of a suspended or revoked driver's license, renewal of a driver's license, or a duplicate or corrected driver's license if, at the time of application:

1. The applicant's privilege to drive in another jurisdiction is revoked or suspended as a result of failing to comply with the licensing requirements of that jurisdiction for which a comparable violation in this State would not have resulted in revocation or suspension;

2. The initial violation that led to the revocation or suspension did not occur within the preceding 5 years;

3. The applicant is otherwise qualified to be licensed in this State; and

4. The Administration determines that the applicant will be able to take any actions required by the other jurisdiction for reinstatement of the privilege to drive in that jurisdiction.

Appellee does not argue that he is eligible for a restricted license under this section.

Appellee appealed the MVA's denial to the Office of Administrative Hearings (OAH). At the appeal hearing before the ALJ, Appellee argued the Interstate Driver's License Compact (Compact), adopted by the Maryland General Assembly and codified at Md. Code Ann., Transp. II § 16-703, prevents the MVA from rejecting his application, or at the very least, the MVA must conduct an investigation into the risk he poses on the road before rejecting his application. Appellee cites Article IV of the Compact, which states:

> The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this Compact, as it would if such conduct had occurred in the home state, in the case of convictions for:
>
> * * *
>
> (2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle.

Transp. II § 16-703, Art. IV.

Appellee argues § 16-103.1 conflicts with the Compact. The ALJ agreed with Appellee and ordered the MVA to proceed with processing his application. The MVA appealed to this Court.

STANDARD OF REVIEW

The Administrative Procedure Act ("Act") establishes the relevant standard of review for administrative agency

decisions. The Act states, in pertinent part, that a court may:

> (3) reverse or modify the [agency's] decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision:
>
> (i) is unconstitutional;
>
> (ii) exceeds the statutory authority or jurisdiction of the final decision maker;
>
> (iii) results from an unlawful procedure;
>
> (iv) is affected by any other error of law;
>
> (v) is unsupported by competent material, and substantial evidence in light of the entire record as submitted; or
>
> (vi) is arbitrary or capricious.

MD. CODE ANN., State Gov't § 10-222(h)(3).

The scope of judicial review is specific and limited. Courts retain, however, the power to review illegal, unreasonable or arbitrary acts by administrative agencies. *Maryland Transp. Authority v. King*, 369 Md. 274, 299 (2002), Harrell, J., concurring (quoting *Heaps v. Cobb*, 185 Md. 372 (1945)). A Court reviewing a decision of an administrative agency generally is limited to determining whether there was substantial evidence on the record as a whole to support the agency's findings of fact and whether the agency's conclusions of law were correct. *MVA v. Atterbeary*, 368 Md. 480, 490-91 (2002). The court will not interfere with administrative decisions unless the decision is unlawful, unreasonable or against the substantial weight of the evidence. *Weiss v. Supervisor*, 266 Md. 238

(1972). "Even with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency," and "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts." *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 69 (1999). The issue in the present matter, the interpretation of Md. Code Ann., Transp. II § 16-103.1 and § 16-703, presents a pure question of law.

The MVA petitions this Court for judicial review pursuant to Md. Code Ann., State Govt. § 10-222(a)(2). It seeks to overturn the decision of the ALJ who ruled adversely to the agency's interests under a delegation of authority made to her pursuant to State Govt. § 10-205 and COMAR 11.11.02.07. Under State Govt. § 10-205 and COMAR 11.11.02.07, the decision of the ALJ is the final decision of the agency. The MVA may obtain judicial review of its own decision, made under a delegation of authority to the OAH through State Govt. § 10-222(a)(2) if it is aggrieved by the decision rendered in its name by the OAH and was a party to the administrative proceeding. *MVA v. Lytle*, 374 Md. 37, 56 n. 5 (2003).

ISSUE PRESENTED

Does Md. Code Ann., Transp. II § 16-103.1 conflict with Md. Code Ann., Transp. II § 16-703, and if so, which statute prevails?

DISCUSSION

In his brief and at the hearing, Appellee articulated why, in his opinion, the statutes were in conflict, and why

the Compact should prevail. Appellee received a lifetime revocation in Florida for his third drunk driving offense. Appellee argues that had he been convicted in Maryland instead of Florida, he would have only faced a maximum revocation period of 18 months under Transp. § 16-208. Since Article IV of the Compact requires Maryland to treat Appellee's convictions as though they took place in Maryland, under Maryland law, he argues, he would have been eligible for a re-issuance of a license long ago. Because § 16-103.1 broadly disqualifies any person who currently has a revoked license in another state without consideration of the comparable penalties in Maryland, as the Compact requires, the Appellee suggests the laws are in conflict.

The MVA points to the plain language of Article V of the Compact to argue the conflict in laws posited by Appellee simply does not exist. Article V states:

> The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:
>
> * * *
>
> (2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of 1 year from the date the license was revoked, such person may make application for a new license *if permitted by law.* The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to

> grant to such person the privilege of driving a motor vehicle on the public highways.

Md. Code Ann., Transp. § 16-703 Art. V. (Emphasis added)

The MVA argues the words "if permitted by law" are intended to harmonize Maryland requirements for a license with the uniformity efforts made by states entering into the Compact. According to the MVA, when a driver has his license revoked in another jurisdiction, only after one year may he apply in Maryland, *and* only if Maryland law permits such an application. In this case, § 16-103.1 unambiguously prohibits issuance of a license to a person whose license is presently revoked in another state. The MVA also claims this has been the long-standing interpretation of the two statutes. It concludes, suggesting that its position is more accurate because it compels drivers with blemished out-of-state records to clear those records before applying in Maryland; such a preliminary cleansing of out-of-state driving records was an intention of the drafters of the Compact.

Appellee relies heavily on an Alabama case, *Ex Parte Welch*, 519 So.2d 517 (1987) to counter the MVA's position. In *Welch*, the Alabama Supreme Court noted that in Alabama, a compact state, the driver's license law states: "[a] driver's license shall not be issued to the following persons: . . . (3) Any person whose driving right or privilege is revoked." Ala.Code § 32-6-7. In this case, as in *Welch*, the government argued the words "if permitted by law" in Article V of the Compact was a reference to § 32-6-7. The *Welch* Court held there is no reason to read § 32-6-7(3) as incorporating extraterritorial revocations, since it was enacted in 1947 and has remained unchanged despite the state's subsequent adoption of the Compact. *Welch*, 519

So.2d at 519. The Court continued stating "[t]o give this section the reading applied . . . would make any revocation by a Compact state, however severe, binding on the licensing authority of this state." *Id.*

The Court finds the reasoning of *Welch* inapplicable to the dispute at bar. The statute cited in *Welch* made no reference to out-of-state license revocations. The comparable Maryland statute, Transp. II § 16-103.1, clearly references out-of-state revocations. That section unambiguously states the MVA may not issue a driver's license to an individual "[d]uring any period for which the individual's license to drive is revoked, suspended, refused, or canceled *in this or any other state.*" Transp. II § 16-103.1. (Emphasis added). Thus, the intent of the General Assembly in the emphasized language of § 16-103.1 was to recognize and respect extraterritorial revocations. This language serves two rational purposes. First, it provides recognition of extraterritorial revocations beyond that which the Compact recognizes. Second, the language of § 16-103.1 provides the MVA with a mechanism to recognize revocations of non-Compact states and deny issuance of a license on that basis. Under Appellee's interpretation of these statutes, revocations from Compact states would have no prohibitive force and effect in Maryland after one year, while revocations from non-Compact states would have force and effect for a period of time consistent with the statute in the non-compact state. This was not the intent of the General Assembly in adopting the Compact.

The Court finds the MVA's interpretation of the two statutes more plausible in light of two other Compact provisions. Article I (b)(2) declares the policy of the states entering into the Compact as one intending to have member states consider the "overall compliance with motor

vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license." Transp. II § 16-703, Art. I(b)(2). Here, the MVA embraced the purpose of the compact by considering Appellee's out-of-state driving record prior to issuing a license. Moreover, Article VI, the "Applicability of Other Laws" clause, states the Compact "nothing contained [in the Compact] shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance." Transp. II § 16-703, Art. VI. Appellee's interpretation of these statutes to his case is inconsistent with the mandate of Article VI. With respect to both Articles I and VI, Appellee's argument is "based on snippets of language shorn from their contextual roots." *MVA V. Lytle*, 374 Md. 37, 58 (2003).

CONCLUSION

The Court finds the decision of the ALJ is affected by an error of law.

MOTOR VEHICLE ADMINISTRATION	*	IN THE
	*	CIRCUIT COURT
Appellant		FOR
V.	*	ANNE ARUNDEL
NORRIS E. GWIN	*	COUNTY
Appellee		CASE NO. C-2004-95540

* *

ORDER

(Filed Aug. 5, 2004)

In light of the foregoing, it is this 5th day of August, 2004, by the Circuit Court for Anne Arundel County hereby

ORDERED that the decision of the Administrative Law Judge is REVERSED; and it is

FURTHER ORDERED that this matter is REMANDED to the OAH with instructions to issue an Order consistent with the rulings in this Opinion.

/s/ Pamela L. North
Pamela L. North
Judge

cc: Leonard R. Stamm, Esq.
Valarie Johnston Smith, Esq.

APPENDIX C

STATE OF MARYLAND
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW BUILDING
11101 GILROY ROAD
HUNT VALLEY, MARYLAND 21031

Beltsville MCA Branch Office

Emmett Norris Gwin	NOTICE DATE:	12-29-2003
200 Laurel Avenue	SOUNDEX:	G500636229714
Laurel, Maryland 20707	CASE NO.:	DOT MVA 01-03-47572

FINDINGS OF FACT AND DECISION

The above indicated Licensee appeared before me on 1-15-04. A hearing was conducted in compliance with MD. CODE ANN., STATE GOV'T §§ 10-201 thru 10-214 inclusive and MD CODE ANN., TRANSP. II §§ 12-202 thru 12-208 inclusive, and COMAR 11.11.02 (and if applicable, 11.11.03).

After considering the evidence introduced and the testimony given at said hearing, I find by a preponderance of the evidence the following facts:

Employed Md. Jockey Club. No alcohol, since Jan. 2000. Attended inpatient program & then outpatient. Revoked in IL since 1982. Lifetime revocation in Florida since 1984. Under 16-703 V. (2) after expiration of one year Licensee may apply & MVA investigate. Such application and investigation is not barred by 16-301.5

And I conclude that Licensee is subject to the provisions of MD. CODE ANN., TRANSP. II § _____

IT IS ORDERED THAT: MVA process Licensee's application for a driver's license.

/s/ Mary Shock
SIGNATURE OF ADMINISTRATIVE LAW JUDGE

Mary Shock
PRINTED NAME OF ADMINISTRATIVE LAW JUDGE

APPENDIX D

STATUTORY PROVISIONS

Md. Code. Ann., Transp. II § 16-103.1(1) (1977, 2002 Repl.Vol.)

§ 16-103.1. Persons disqualified, generally

The Administration may not issue a driver's license to an individual:

(1) During any period for which the individual's license to drive is revoked, suspended, refused, or canceled in this or any other state, unless the individual is eligible for a restricted license under § 16-113(e) of this subtitle;

(2) Who is an habitual drunkard, habitual user of narcotic drugs, or habitual user of any other drug to a degree that renders the individual incapable of safely driving a motor vehicle;

(3) Who previously has been adjudged to be suffering from any mental disability or mental disease and who, at the time of application, has not been adjudged competent;

(4) Who is required by this title to take an examination, unless the individual has passed the examination;

(5) Whose driving of a motor vehicle on the highways the Administration has good cause to believe would be inimical to public safety or welfare;

(6) Who is unable to exercise reasonable control over a motor vehicle due to disease or a physical disability, including the loss of an arm or leg or both, except that, if the individual passes the examination required by this title, the Administration may issue the individual a restricted license requiring the individual to wear a workable artificial limb or other similar body attachment;

(7) Who is unable to understand highway warning or direction signs written in the English language;

(8) Who is unable to sign the individual's name for identification purposes;

(9) Who is 70 years old or older and applying for a new license, unless the applicant presents to the Administration: (i) Proof of the individual's previous satisfactory operation of a motor vehicle; or (ii) A written certification acceptable to the Administration from a licensed physician attesting to the general physical and mental qualifications of the applicant; or

(10) Who otherwise does not qualify for a license under this title.

Md. Code. Ann., Transp. II § 16-113(e)
(1977, 2002 Repl.Vol.)

§ 16-113. Issuance of restricted licenses

* * *

(e)(1) In addition to the other restrictions provided under this subtitle, the Administration may issue:

(i) A driver's license that is valid only in the State of Maryland to an applicant who has been suspended in another jurisdiction as a result of failing to comply with the financial responsibility requirements of that jurisdiction; or

(ii) A temporary driver's license that is valid only in the State of Maryland to an applicant for reinstatement of a suspended or revoked driver's license, renewal of a driver's

license, or a duplicate or corrected driver's license if, at the time of application:

1. The applicant's privilege to drive in another jurisdiction is revoked or suspended as a result of failing to comply with the licensing requirements of that jurisdiction for which a comparable violation in this State would not have resulted in revocation or suspension;

2. The initial violation that led to the revocation or suspension did not occur within the preceding 5 years;

3. The applicant is otherwise qualified to be licensed in this State; and

4. The Administration determines that the applicant will be able to take any actions required by the other jurisdiction for reinstatement of the privilege to drive in that jurisdiction.

(2) A temporary license issued under paragraph (1) of this subsection shall be valid for 90 days.

(3) The Administration shall adopt regulations for the issuance of temporary licenses under paragraph (1) of this subsection.

Md. Code. Ann., Transp. II § 16-208(b)
(1977, 2002 Repl.Vol.)

§ 16-208. Length of Suspension

* * *

(b)(1) Any individual whose license or privilege to drive has been revoked may apply for reinstatement of the

individual's license or privilege as provided in this subsection.

(2)(i) If it is the individual's first revocation, the individual may file a reinstatement application at any time after the day the revoked license is surrendered to and received by the Administration or, in the case of an individual who does not have a license issued under this title, after the effective date of the revocation.

(ii) Except as provided in paragraph (6) of this subsection, on receipt of the application, the Administration may reinstate the license or privilege 6 months after the revoked license is received by the Administration or, in the case of an individual who does not have a license issued under this title, 6 months after the effective date of revocation.

(3)(i) If it is the individual's second revocation, the individual may file a reinstatement application at any time after 1 year from the day the revoked license is surrendered to and received by the Administration or, in the case of an individual who does not have a license issued under this title, after 1 year from the effective date of revocation.

(ii) Except as provided in paragraph (6) of this subsection, on receipt of the application, the Administration may reinstate the license or privilege.

(4)(i) If it is the individual's third revocation, the individual may file a reinstatement application at any time after 18 months from the day the revoked license is surrendered to and received by the Administration or, in the case of an individual who does not have a license issued under this title, after 18 months from the effective date of revocation.

(ii) Except as provided in paragraph (6) of this subsection, on receipt of the application, the Administration may reinstate the license or privilege.

(5)(i) If it is the individual's fourth or subsequent revocation, the individual may file a reinstatement application at any time after 2 years from the day the revoked license is surrendered to and received by the Administration or, in the case of an individual who does not have a license issued under this title, after 2 years from the effective date of revocation.

(ii) Except as provided in paragraph (6) of this subsection, on receipt of the application, the Administration may reinstate the license or privilege.

(6)(i) The Administration may not reinstate a license or privilege to drive under this subsection if the license or privilege has been refused, revoked, suspended, or canceled under any other provision of the Maryland Vehicle Law.

(ii) 1. In this subparagraph, "alcohol-related or drug-related driving incident" means a:

A. Conviction or probation before judgment for a violation of § 21-902(a), (b), (c), or (d) of this article or a substantially similar law of another jurisdiction;

B. Refusal to submit to a test under § 16-205.1 of this title or a substantially similar law of another jurisdiction; or

C. Test result that indicates an alcohol concentration of 0.10 or more at the time of testing under § 16-205.1 of this title or a substantially similar law of another jurisdiction.

2. Alcohol-related or drug-related driving incidents committed at the same time or arising out of the same circumstances may not be considered separate alcohol-related or drug-related driving incidents for the purpose of this subparagraph.

3. Notwithstanding paragraphs (1) through (5) of this subsection, the Administration may reinstate a license or privilege to drive only if, after an investigation of an individual's habits and driving ability, the Administration is satisfied it will be safe to reinstate the license or privilege of an individual who has been:

A. Involved in any combination of three or more separate alcohol-related or drug-related driving incidents;

B. Involved in a vehicular accident resulting in the death of another person, or

C. Convicted of a violation for failing to stop after a vehicular accident resulting in bodily injury or death.

(7) Except as otherwise provided in this title, before issuing a new license, the Administration shall require the applicant to submit to the examinations that it considers appropriate.

Md. Code. Ann., Transp. II §§ 16-701-03 (1977, 2002 Repl.Vol.)

Subtitle 7. Driver License Compact

§ 16-701. Definitions

(a) In this subtitle the following words have the meanings indicated.

(b) "Article" means an article of the Driver License Compact.

(c) "Compact" means the Driver License Compact.

(d) "Executive head", with reference to this State, means the Governor.

(e) "Licensing authority", with reference to this State, means the Administration.

§ 16-702. Enactment of Compact

The Driver License Compact is enacted into law and entered into with other jurisdictions that join in the Compact in the form substantially as the Compact appears in § 16-703 of this subtitle.

§ 16-703. Driver License Compact

Article I

Findings and Declaration of Policy

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever

jurisdiction the vehicle is operated. (b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

Article II

Definitions

As used in this Compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person

charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

Article III

Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

Article IV

Effect of Conviction

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this Compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the

influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to any other convictions, reported pursuant to Article III, the licensing authority in the home state shall record the conviction on the individual's driving record, but may not assess points for the conviction.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

Article V

Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of 1 year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

Article VI

Applicability of Other Laws

Except as expressly required by provisions of this Compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

Article VII

Compact Administrator and Interchange of Information

(a) The head of the licensing authority of each party state shall be the administrator of this Compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this Compact.

(b) The Administrator of each party state shall furnish to the Administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this Compact.

Article VIII

Entry into Force and Withdrawal

(a) This Compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the Compact of any report of conviction occurring prior to the withdrawal.

Article IX

Construction and Severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Fla. Stat. Ann. § 322.28(2)(e)

Chapter 322. Drivers' Licenses

322.28. Period of suspension or revocation

(2) In a prosecution for a violation of § 316.193 or former § 316.1931, the following provisions apply:

(e) The court shall permanently revoke the driver's license or driving privilege of a person who has been convicted four times for violation of § 316.193 or former § 316.1931 or a combination of such sections. The court shall permanently revoke the driver's license or driving privilege of any person who has been convicted of DUI manslaughter in violation of § 316.193. If the court has not permanently revoked such driver's license or driving

privilege within 30 days after imposing sentence, the department shall permanently revoke the driver's license or driving privilege pursuant to this paragraph. No driver's license or driving privilege may be issued or granted to any such person. This paragraph applies only if at least one of the convictions for violation of § 316.193 or former § 316.1931 was for a violation that occurred after July 1, 1982. For the purposes of this paragraph, a conviction for violation of former § 316.028, former § 316.1931, or former § 860.01 is also considered a conviction for violation of § 316.193. Also, a conviction of driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, or any other similar alcohol-related or drug-related traffic offense outside this state is considered a conviction for the purposes of this paragraph.

Supreme Court, U.S.
FILED
JUL 11 2005
OFFICE OF THE CLERK

(2)

No. 04-1665

In The Supreme Court of the United States

NORRIS EMMETT GWIN,

Petitioner,

v.

MARYLAND MOTOR VEHICLE ADMINISTRATION,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Maryland

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

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COUNTERSTATEMENT OF QUESTION PRESENTED

Did the Maryland Motor Vehicle Administration correctly apply Maryland law by denying a Maryland driver's license to an applicant whose driving privileges have been revoked in two other states due to multiple convictions for drunk driving?

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STATUTORY PROVISIONS

Md. Code Ann., Transp. II (1977, 2002 Repl. Vol., 2004 Cum. Supp.):

§ 16-103.1 [Persons not to be licensed] – Disqualifications.

The Administration may not issue a driver's license to an individual:

(1) During any period for which the individual's license to drive is revoked, suspended, refused, or canceled in this or any other state, unless the individual is eligible for a restricted license under § 16-113(e) of this subtitle;

§ 16-703. Text of Compact.

* * *

Article V
Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where the application is made shall not issue a license to drive to the applicant if:

* * *

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of 1 year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such

applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

STATEMENT OF THE CASE

In the spring of 2003, Petitioner Norris Emmett Gwin ("Gwin") filed a first-time application for a Maryland driver's license. Gwin's driving privileges had been revoked in Illinois and Florida prior to 1985, after he accumulated four convictions for driving under the influence of alcohol ("DUI") in the 1970's and 1980's. A 1984 DUI conviction in Florida resulted in the permanent revocation of his license there. Because Gwin never obtained reinstatement of his privileges in either state before applying in Maryland, he was disqualified under Md. Code Ann., Transp. II ("TR") § 16-103.1(1) and the MVA denied his application.[1]

Section 16-103.1 enumerates circumstances that disqualify any person from obtaining a driver's license in Maryland. In particular, TR § 16-103.1(1) prohibits the Motor Vehicle Administration ("MVA") from issuing a license to an applicant "[d]uring any period for which the individual's license to drive is revoked, suspended, refused, or cancelled in this or any other state," except to the extent the individual meets the criteria for a temporary license under TR § 16-113(e). Thirty-five years ago, the

[1] Except where otherwise noted, all statutory references are to the Annotated Code of Maryland, Transportation Article, 2002 Replacement Volume and 2004 Cumulative Supplement.

Maryland Legislature enacted the predecessor to current TR § 16-103.1(1). *See* 1970 Md. Laws, Ch. 534. Since then, its provisions have been applied to all license applicants, including current Maryland licensees seeking renewal and new applicants previously licensed in other states.

Gwin requested an administrative hearing at which he contended that in 1987 the Maryland Legislature superseded TR § 16-103.1(1) by enacting the Driver License Compact, Md. Code Ann., Transp. II §§ 16-701 through 16-708. ("Driver License Compact," or "DLC.")[2] Specifically, TR § 16-703, Article V of the DLC provides that Maryland and other member states "shall not issue a license" to new applicants in certain circumstances. Under TR § 16-703, Art. V(1), a member state may not issue a license to any individual whose driving privileges are suspended in another party state until the suspension terminates. Article V(2) also precludes a party state from licensing an out-of-state revoked driver, "except that after the expiration of 1 year from the date the license was revoked, such person may make application for a new license *if permitted by law*," subject to a safety investigation. TR § 16-703, Art. V(2) (emphasis supplied).[3]

---

[2] The full text of the Driver License Compact, TR § 16-703, may be found in Petitioner's Appendix at pages 48-54.

[3] The only language in the DLC modified by "if permitted by law" is the prior portion of the sentence that would permit a party state to license the revoked applicant after one year. The DLC also includes a savings clause applicable to the entire DLC. TR § 16-703, Art. VI provides that "[e]xcept as expressly required by provisions of this Compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state." (Pet. App. at 52.)

Gwin insisted the phrase "if permitted by law" did not refer to Maryland's licensing disqualification in TR § 16-103.1(1). Since he had been revoked in Florida and Illinois more than one year, Gwin argued the MVA could not reject his application based on the extraterritorial revocations. At the conclusion of the hearing, an administrative law judge ("ALJ") determined that the statutes ultimately conflicted, and ordered the MVA to continue processing Gwin's application under the terms of TR § 16-703, Art. V(2). (Pet. App. at 40.)

The MVA appealed the administrative order to the Circuit Court for Anne Arundel County, Maryland, arguing that the phrase "if permitted by law" in TR § 16-703, Art. V(2) was intended to preserve Maryland's more stringent law, TR § 16-103.1(1), that prevents an out-of-state applicant from obtaining a license during any period when his or her driving privileges remain revoked in another state. Thus, the statutes could be harmonized to avoid any conflict. Further, there was nothing in the legislative history indicating the Maryland Legislature recognized a conflict between the two provisions, either when the DLC was adopted in 1987, or when TR § 16-103.1(1) was amended in 1993 to add language expressly applying it to suspensions and revocations ordered by other states, consistent with the MVA's longstanding interpretation. The circuit court agreed with the MVA's analysis and reversed the ALJ's administrative order to process Gwin's license application. (Pet. App. at 35-38.)

On appeal from the circuit court, the Maryland Court of Appeals affirmed the determination that Gwin was disqualified under the terms of TR § 16-103.1(1) from obtaining a Maryland driver's license while his driving privileges were revoked in other states. *Gwin v. Motor*

Vehicle Admin., 385 Md. 440 (2005) (Pet. App. at 1-29). The Court applied Maryland law of statutory construction to determine legislative intent in enacting both TR § 16-103.1(1) and TR § 16-703, Art. V(2). In doing so, it followed the principle that two legislative acts *in pari materia* should be harmonized where possible to avoid rendering portions of either superfluous or nugatory. (Pet. App. at 24-25.) The Court also found significant the Legislature's 1993 amendment to TR § 16-103.1(1), after it enacted the DLC, adding the words "in this or any other state" in order to clarify that TR § 16-103.1(1)'s disqualification applied to an applicant's extraterritorial suspensions and revocations. (Pet. App. at 15-16, 23.) Thus, the 1993 amendment distinguished Maryland's statute from the Alabama law interpreted in *Welch v. Alabama Dept. of Pub. Safety*, 519 So.2d 517 (Ala. 1987), which "lack[ed] the specific explicit language 'in this or any other state' found in Md. Code § 16-103.1(1)." (Pet. App. at 23.)[4]

Ultimately, the Court of Appeals held the plain language "if permitted by law" in the DLC provision TR § 16-703, Art. V(2) means what it says: that a party state *may* permit the application and licensure of a driver still revoked in another party state after one year, but only if the other licensing laws in the new state of application allow issuance of a license under those circumstances.

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[4] The Court also found unpersuasive Gwin's reliance on *State v. Vargason*, 607 N.W.2d 691, 698 (Ia. 2000), and *Bray v. Dep't of Pub. Safety*, 638 So.2d 732 (La.App. 1994). Those cases also interpreted the phrase "if permitted by law" in Article V(2) of the DLC to permit an out-of-state revoked driver to apply for and obtain a license after the revocation has existed for one year, if such licensure was otherwise permitted under the state's other licensing laws. (Pet. App. at 22 n. 11, 23.)

(Pet. App. at 26.) The Court rejected the remainder of Gwin's argument, saying:

> This Court finds nothing in the wording of § 16-103.1 to indicate that it was intended to be subordinated to the Compact, nor do we find any statement in the language of the Compact found at § 16-703 to evidence an intent that the Compact was intended to supercede what may be viewed as more stringent state motor vehicle laws. Moreover, it is illogical to presume that the Legislature intended with its entry as a Compact state to make Maryland a safe harbor for extra-territorial drivers who have incurred harsh penalties in their home state for motor vehicle violations. The MVA echoes this sentiment, observing that the Compact was not intended to encourage "the worst and most dangerous drivers to avoid the consequences of their conduct by simply moving into another party state."

(Pet. App. at 26-27.)

REASONS FOR DENYING THE WRIT

This case presents no federal question. It was resolved by the Maryland Court of Appeals on state law grounds, applying Maryland law on statutory construction to interpret the legislative intent and interplay between two state statutes, Md. Code Ann., Transp. II §§ 16-103.1(1) and 16-703, Article V(2). Gwin incorrectly cites federal jurisdiction under Article I, Section 10, Clause 3 ("Compact Clause") of the United States Constitution and 28 U.S.C. § 1257(a), simply because Md. Code Ann., Transp. II § 16-703 was enacted by the Maryland Legislature as part of the interstate agreement known as the Driver